

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

District :

Second Appeal No. 77 of 2006

Office Notes, Office Memoranda of Coram,
 appearances, Court orders or directions
 and Registrar's orders

Court's or Judge's orders

Shri M. Husain Adv. for appellant.
 Shri Anilkumar Adv for respondent.

CORAM : C. L. PANGARKAR J.

Dated: 23rd November, 2006.

Heard Shri Husain the learned
 counsel for the appellant and Shri
 Anilkumar the learned counsel for the
 respondent. Appellant-plaintiff filed a
 suit for recovery of price of goods sold to
 the defendant-Western Coalfields Ltd.
 The goods were sold on 12.02.91 and

30.04.91. Since the price of the goods was not paid by the defendant inspite of the notice a suit came to be instituted against the defendant. One of the ground that was raised by the defendant was that the suit filed by the plaintiff was barred by limitation inasmuch as the suit was not filed within 3 years from the date of sell of goods to the defendant. Plaintiff had contended that the defendant had acknowledged the liability by sending answer/reply to the notice under Section 80 of Civil Procedure Code. The learned Judge of the trial Court held that the suit was not barred by limitation.

The appellate Court however came to the conclusion that the suit was under Article 14 of the Limitation Act and the same having not been instituted within 3 years from the date of supply of

the goods was barred by limitation and Ex. 61 letter/reply sent by defendant does not constitute an acknowledgment.

The learned counsel for the appellant contended that the appellate Court was wrong in holding that Ex. 61 the letter written by the defendant does not constitute an acknowledgment. Although there are no concurrent finding of fact, what has to be seen is as to whether the finding recorded by the first appellate Court is perverse and only if it is perverse then a second appeal would be tenable. Further it has to be seen if any substantial question of law is involved. Whether a particular document is or is not an acknowledgment is clearly a question of fact. It appears from the reasons given by the learned first appellate Court that he had considered

the contents of the letter and found that there is absolutely no acknowledgment of liability in that letter. What that letter stated was that the plaintiff had not complied with certain formalities. After having gone through the judgment of the first appellate Court I do not find any perversity. There is no substantial question of law involved. The appeal is, therefore, dismissed in limine.

JUDGE

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